

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

September 9, 2004 Session

ARNOLD BILTCLIFFE v. HAILEY'S HARBOR, INC.

Appeal from the Circuit Court for Davidson County
No. 01C-3150 Marietta M. Shipley, Judge

No. M2003-02408-COA-R3-CV - Filed October 27, 2005

This appeal involves a dispute between a truck driver and the author of a letter sent to the truck driver's employer that resulted in his termination. The truck driver filed suit against the author of the letter and the author's employer in the Circuit Court for Davidson County seeking damages for defamation, intentional interference with his employment contract, and intentional interference with a business relationship. The case went to trial against only the employer of the letter's author. After the trial court directed a verdict on the intentional interference with the employment contract claim, a jury awarded the truck driver \$65,000 on his defamation claim but returned a defendant's verdict on the intentional interference with a business relationship claim. The trial court later granted a judgment in accordance with a motion for a directed verdict on the defamation claim but failed to rule on the defendant employer's alternative motion for a new trial. We have determined that the trial court erred by granting the motion for a judgment in accordance with the motion for a directed verdict. Accordingly, we reverse the order dismissing the truck driver's defamation claim and remand the case to the trial court to rule on the defendant's motion for a new trial.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Reversed and Remanded

WILLIAM C. KOCH, JR., P.J., M.S., delivered the opinion of the court, in which PATRICIA J. COTTRELL and FRANK G. CLEMENT, JR., JJ., joined.

James L. Harris, Nashville, Tennessee, for the appellant, Arnold Biltcliffe.

R. Francene Kavin, Brentwood, Tennessee, for the appellee, Hailey's Harbor, Inc.

OPINION

I.

Arnold Biltcliffe worked as a truck driver for Alley-Cassetty Trucking, Inc. (Alley-Cassetty") for nine years. His primary job was to haul coal from Hailey's Harbor, Inc. ("Hailey's Harbor") to various destinations. Hailey's Harbor is located in Nashville on the Cumberland River and is in the

business of offloading barges containing coal, salt, and fertilizer onto waiting trucks for delivery. Mr. Biltcliffe picked up and delivered several loads of coal each day from Hailey's Harbor.

Hailey's Harbor was an extremely busy place in the morning because of the many trucks arriving to pick up materials. Because drivers were paid based on the number of deliveries they made, many drivers arrived as soon as Hailey's Harbor opened so that they could be loaded as early as possible and thereby make more deliveries each day. Accordingly, the drivers took their place in line very seriously, and attempting to get in front of another driver waiting to be loaded was viewed as a serious offense. The drivers would pass the time while waiting for their trucks to be loaded by exchanging jokes, rude remarks, and good-natured insults over their CB radios. They would also argue with each other over their CB radios. The employees of Hailey's Harbor were privy to these conversations because they kept CB radios in their offices and at the loading stations.

Mr. Biltcliffe arrived at Hailey's Harbor on the morning of July 13, 2001 to pick up a load of coal. Another driver believed that Mr. Biltcliffe had cut in line in front of him. He accused Mr. Biltcliffe over the CB radio of cutting in line and threatened to block Mr. Biltcliffe's truck to prevent him from leaving the harbor. According to the driver, Mr. Biltcliffe responded "I got something in here, if you block my truck, it's going to be the last truck you ever block." According to Mr. Biltcliffe, he made his statement only after the other driver told him that he would put a stop to Mr. Biltcliffe.

Several persons, including employees of Hailey's Harbor, overheard this conversation. Four days later, on July 17, 2001, Joey Hendren, the harbor master, wrote a letter to Mr. Biltcliffe's supervisor at Alley-Cassetty informing him of the incident that took place on July 13, 2001, as well as other problems Hailey's Harbor had experienced with Mr. Biltcliffe. Mr. Hendren stated that the harbor employees were reluctant to load Mr. Biltcliffe's truck because of his constant complaints and threats. Mr. Hendren also characterized the July 13, 2001 incident as one in which Mr. Biltcliffe threatened "to 'kill' another Alley-Cassetty driver over the radio while in our facility." Mr. Hendren closed his letter by recommending that Mr. Biltcliffe "haul elsewhere."

Alley-Cassetty decided to terminate Mr. Biltcliffe's contract after it received Mr. Hendren's letter. The company informed Mr. Biltcliffe of their decision on July 27, 2001. The company also sent Mr. Biltcliffe a follow-up letter stating that it had no choice regarding his termination because ninety-nine percent of its hauling business came from Hailey's Harbor.

On August 27, 2001, Mr. Biltcliffe filed suit against Hailey's Harbor and Mr. Hendren in the Chancery Court for Davidson County. He sought damages for defamation, intentional interference with a business relationship, and intentional interference with an employment contract. Hailey's Harbor and Mr. Hendren answered and denied liability on the ground that the statements in the letter were true. The case was later transferred to the Circuit Court for Davidson County, and Mr. Hendren was dismissed from the case.

The trial court conducted a three-day jury trial in August 2003. Hailey's Harbor moved for a directed verdict on all claims at the close of all the proof; however, the trial court directed a verdict

for Hailey's Harbor only on Mr. Biltcliffe's interference with an employment contract claim. Thereafter, the jury awarded Mr. Biltcliffe \$65,000 on his defamation claim but declined to award him damages on his intentional interference with a business relationship claim or punitive damages. Mr. Biltcliffe moved for a new trial with regard to the dismissal of his interference with a business relationship claim, and Hailey's Harbor moved for a judgment in accordance with a motion for a directed verdict on the defamation claim. In the alternative, Hailey's Harbor sought a new trial on the defamation claim. The trial court denied Mr. Biltcliffe's motion for a new trial but granted Hailey's Harbor's motion for a judgment in accordance with a directed verdict. However, the court overlooked ruling on Hailey's Harbor's alternative motion for a new trial.

Mr. Biltcliffe appealed. He takes issue with the trial court's decisions to enter a judgment notwithstanding the verdict on his defamation claim and to deny his motion for a new trial on his intentional interference with a business relationship claim. We have determined that the trial court properly denied Mr. Biltcliffe's motion for a new trial on his intentional interference with a business relationship claim. However, we also find that the trial court erred by concluding that Hailey's Harbor was entitled to a judgment as a matter of law on Mr. Biltcliffe's defamation claim.

II.

MR. BILTCLIFFE'S DEFAMATION CLAIM

Mr. Biltcliffe first takes issue with the trial court's decision to grant the post-trial Tenn. R. Civ. P. 50.02 motion filed by Hailey's Harbor seeking a judgment on his defamation claim notwithstanding the verdict. He asserts that the trial court erred by finding that the statements in Mr. Hendren's letter were substantially true as a matter of law. We agree.

A.

Directed verdicts under either Tenn. R. Civ. P. 50.01 or 50.02 are appropriate only when reasonable minds cannot differ as to the conclusions to be drawn from the evidence. *Alexander v. Armentrout*, 24 S.W.3d 267, 271 (Tenn. 2000); *Eaton v. McLain*, 891 S.W.2d 587, 590 (Tenn. 1994); *Ingram v. Earthman*, 993 S.W.2d 611, 627 (Tenn. Ct. App. 1998). A case should not be taken away from the jury, even when the facts are undisputed, if reasonable persons could draw different conclusions from the facts. *Gulf, M. & O.R. Co. v. Underwood*, 182 Tenn. 467, 474, 187 S.W.2d 777, 779 (1945); *Hurley v. Tenn. Farmers Mut. Ins. Co.*, 922 S.W.2d 887, 891 (Tenn. Ct. App. 1995). A trial court may, however, direct a verdict with regard to an issue that can properly be decided as a question of law because deciding purely legal questions is the court's responsibility, not the jury's.

In appeals from a directed verdict, the reviewing courts do not weigh the evidence, *Conatser v. Clarksville Coca-Cola Bottling Co.*, 920 S.W.2d 646, 647 (Tenn. 1995); *Benton v. Snyder*, 825 S.W.2d 409, 413 (Tenn. 1992), or evaluate the credibility of the witnesses. *Benson v. Tenn. Valley Elec. Coop.*, 868 S.W.2d 630, 638-39 (Tenn. Ct. App. 1993). Instead, they review the evidence in the light most favorable to the motion's opponent, give the motion's opponent the benefit of all reasonable inferences, and disregard all evidence contrary to that party's position. *Alexander v.*

Armentrout, 24 S.W.3d at 271; *Eaton v. McLain*, 891 S.W.2d at 590; *Smith v. Bridgestone/Firestone, Inc.*, 2 S.W.3d 197, 199 (Tenn. Ct. App. 1999). The courts use the same standards when they review a decision either to grant or deny a post-trial motion for a judgment in accordance with a motion for a directed verdict. *Holmes v. Wilson*, 551 S.W.2d 682, 685 (Tenn. 1977); *Kaley v. Union Planters Nat'l Bank*, 775 S.W.2d 607, 611 (Tenn. Ct. App. 1988); *Groover v. Torkell*, 645 S.W.2d 403, 409 (Tenn. Ct. App. 1982).

B.

The respective roles of the trial court and jury in defamation proceedings are essentially the same as they are in other civil cases. Thus questions regarding (a) whether the defendant communicated a statement regarding the plaintiff to a third person, (b) whether the statement is true or false, and (c) whether the defendant had the requisite fault are normally questions of fact for the jury.¹ RESTATEMENT (SECOND) OF TORTS § 617 (1977); *see also Global Relief Found., Inc. v. New York Times Co.*, 390 F.3d 973, 987 (7th Cir. 2004); *Cweklinsky v. Mobil Chem. Co.*, 837 A.2d 759, 770 (Conn. 2004); *Fink v. Oshins*, 49 P.3d 640, 646 (Nev. 2002). However, as in other civil proceedings, trial courts may direct verdicts either for or against defamation claims if the evidence regarding the claim is so overwhelmingly one-sided that it would permit a reasonable fact-finder to reach only one conclusion. RESTATEMENT (SECOND) OF TORTS § 617 cmt. a.

Despite the similarities between defamation proceedings and other proceedings, trial courts in defamation proceedings possess one additional adjudicatory prerogative that they do not possess in other civil cases. They have the independent authority to determine, based on all the facts, (a) whether the communication at issue is reasonably capable of conveying the particular meaning or innuendo ascribed to it by the plaintiff and (b) whether that meaning is defamatory in character. RESTATEMENT (SECOND) OF TORTS § 614(1) (1977); *Memphis Publ'g Co. v. Nichols*, 569 S.W.2d 412, 419 (Tenn. 1978) (holding that the preliminary question of whether the published article was capable of being understood in a defamatory sense is a question of law to be determined by the court); *Revis v. McClean*, 31 S.W.3d 250, 253 (Tenn. Ct. App. 2000) (holding that “[w]hether a communication is capable of conveying a defamatory meaning is a question of law”).

According to the Restatement, a communication is defamatory “if it tends so to harm the reputation of another as to lower him [or her] in the estimation of the community or to deter third persons from associating or dealing with him [or her].” RESTATEMENT (SECOND) OF TORTS § 559 (1977); *see also Quality Auto Parts Co. v. Bluff City Buick Co.*, 876 S.W.2d 818, 820 (Tenn. 1994) (holding that the basis of a defamation action is that the defamation resulted in injury to the plaintiff’s character or reputation); *Davis v. The Tennessean*, 83 S.W.3d 125, 128 (Tenn. Ct. App. 2001) (holding that the defamatory statement must result in injury to the plaintiff’s character and reputation). A trial court is permitted to determine that a statement is not defamatory as a matter of

¹To establish a prima facie case of defamation in Tennessee, a plaintiff must establish that the defendant published a statement with knowledge that it was false and defaming to the plaintiff, with reckless disregard for the truth of the statement, or with negligence in failing to ascertain the truth of the statement. *Sullivan v. Baptist Mem'l Hosp.*, 995 S.W.2d 569, 571 (Tenn. 1999).

law under RESTATEMENT (SECOND) OF TORTS § 614(1) only when it can say that the statement is not reasonably capable of any defamatory meaning and cannot be reasonably understood in any defamatory sense. *White v. Fraternal Order of Police*, 909 F.2d 512, 518 (D.C. Cir. 1990).

Determining whether a statement is capable of conveying a defamatory meaning and whether the statement is false are distinct elements of the tort of defamation and must be considered separately. *Moldea v. New York Times Co.*, 15 F.3d 1137, 1142 (D.C. Cir. 1994). Thus, a statement that is true may nonetheless be defamatory. However, only a statement that is both defamatory and false will expose the speaker or writer to liability for defamation. *Gibbons v. Schwartz-Nobel*, 928 S.W.2d 922, 927 (Tenn. Ct. App. 1996) (holding that the plaintiff in a libel case must prove that the statement was “false and defamatory”).

C.

When Hailey’s Harbor moved for a directed verdict at the close of Mr. Biltcliffe’s case-in-chief, it asserted that it was entitled to a judgment on the defamation claim as a matter of law because the only conclusion to be drawn from the evidence was that the statement in Mr. Hendren’s July 17, 2001 letter was true. The trial court overruled the motion. Hailey’s Harbor renewed its motion for a directed verdict at the close of all the proof. The trial court granted the motion but only with regard to the interference with contract claim. At no time before the case went to the jury did Hailey’s Harbor request the trial court to exercise its power under RESTATEMENT (SECOND) OF TORTS § 614(1) to rule that the statement in Mr. Hendren’s letter was not reasonably capable of conveying a defamatory meaning.²

The first time that Hailey’s Harbor asked the trial court to make an independent determination regarding whether the statement in Mr. Hendren’s letter was capable of conveying a defamatory meaning was during the September 19, 2003 hearing on the parties’ post-trial motions. The lawyer representing Hailey’s Harbor insisted “that the question of whether or not this [the statement in Mr. Hendren’s letter] was, in fact, libelous, whether it was capable of being defamation became a question for Court to rule on.” While the court alluded to its power to grant directed verdicts, it stated, “I’m not exactly sure where you get that from” and added later that “there is no statute, there’s no case that says the Court first has to determine whether there is libel.”³ After further conversation with the lawyer representing Hailey’s Harbor, the trial court announced that “the

² Hailey’s Harbor argued in the trial court that it raised this matter in its motion in limine. We have examined this motion and do not find that Hailey’s Harbor asserted that Mr. Hendren’s statement was not capable of conveying a defamatory meaning. To the contrary, Hailey’s Harbor argued that “[b]ecause the statements made by Hailey’s Harbor in the letter written to Alley-Cassetty were true, [p]laintiff cannot prove the element of falsity for defamation, and should not be allowed to waste the Court’s and the jury’s time and resources.” We have already pointed out that whether a statement is capable of conveying a defamatory meaning and whether the statement is true are entirely different questions.

³ The references to “libel” and “libelous” indicate that the lawyer representing Hailey’s Harbor and the trial court did not fully grasp the trial court’s prerogative under RESTATEMENT (SECOND) OF TORTS § 614(1). In fact, the lawyer conceded during argument that she “had difficulty myself understanding if it’s a question of law for the Court and, yet, then how does anything ever go to the jury?”

Court does have to determine if it's a libelous statement," that is whether the statement was "substantially true."⁴

After Mr. Biltcliffe's lawyer responded to Hailey's Harbor's motion, the trial court stated, "I think you are right about the Court as a first line of defense has to determine whether that's libelous." Thereafter, the court stated:

But taken in this whole context and taken the fact that other people reported what he said, I essentially find that this [Mr. Hendren's statement] was substantially true under 7.03.⁵ And I as the 13th juror cannot support the verdict. Therefore, I am granting a motion for directed verdict on the issue of whether it was libel. I'm not granting a new trial. I'm going back to the original motion for directed verdict.

Accordingly, the order granting the post-trial Tenn. R. Civ. P. 50.02 motion filed by Hailey's Harbor stated that "it was for the Court to determine the question of libel at the trial of this matter, taking the record and all of the testimony given during the trial into context. The statements made in [d]efendant's letter of July 17, 2001 were substantially true, and focusing on T.P.I. 3-7.03, there was no libel."

D.

The trial court's statements during the argument on the post-trial motions and the language in its order granting Hailey's Harbor's Tenn. R. Civ. P. 50.02 motion reveal that the trial court failed to understand its role under RESTATEMENT (SECOND) OF TORTS § 614(1) and that it also confused its distinctly different responsibilities with regard to Hailey's Harbor's Tenn. R. Civ. P. 50.02 motion and its alternative motion for a new trial.⁶ They do not reflect that the trial court was exercising its prerogative RESTATEMENT (SECOND) OF TORTS § 614(1) to determine that the statements in Mr. Hendren's letter were not capable of conveying a defamatory meaning. Nor can they be construed as granting Hailey's Harbor's motion for new trial. The only possible interpretation of the trial court's order is that it had determined the only conclusion reasonable persons could draw from the evidence was that the statements in Mr. Hendren's July 17, 2001 letter were true and, therefore, that Hailey's Harbor was entitled to a judgment on Mr. Biltcliffe's defamation claim notwithstanding the verdict. We respectfully disagree with this conclusion.

⁴ At this point, it is evident that the trial court had blurred the distinction between whether the statement is capable of conveying a defamatory meaning and whether the statement is true.

⁵ The trial court is referring to the pattern jury instruction stating that "[t]ruth is a defense to a liable action." T.P.I. 3 – Civil 7.03, 8 TENNESSEE PRACTICE: TENNESSEE PATTERN JURY INSTRUCTIONS 240 (5th ed. 2005).

⁶ A trial court acts as a thirteenth juror only with regard to motions for new trial. It does not act as a thirteenth juror when ruling on a post-trial Tenn. R. Civ. P. 50.02 motion.

Mr. Biltcliffe's case is based on the portion of Mr. Hendren's July 17, 2001 letter regarding Mr. Biltcliffe's July 13, 2001 conversation with another driver over their CB radios. Mr. Hendren characterized Mr. Biltcliffe's statement as a threat to "kill" another driver. The fact that Mr. Hendren placed the word "kill" in quotation marks is extremely significant. Using quotation marks can convey more than one meaning. Most commonly, quotation marks are used to enclose direct quotations – that is to indicate to the reader that the words within the quotation marks are precisely what the speaker said.⁷ However, quotation marks may also be used to convey other meanings. They may signal that the writer is characterizing what the speaker actually said.⁸ They may also indicate that the writer intends to use quoted material to describe something else.⁹ See Bryan A. Garner, *The Redbook: A Manual on Legal Style* § 1.31 (2002). Accordingly, persons reading the July 17, 2001 letter could have understood either that Mr. Hendren was quoting Mr. Biltcliffe directly, that he was conveying his interpretation of what Mr. Biltcliffe meant, or that he was simply describing a particular incident that was of particular concern.

Statements must be taken in context in cases like this one. *Revis v. McClean*, 31 S.W.3d at 253. It is essentially undisputed that none of the persons who overheard Mr. Biltcliffe's conversation with the other driver heard him actually use the word "kill." In light of this evidence, reasonable persons could conclude that the statement in Mr. Hendren's letter was false because it is not an accurate direct quotation of what Mr. Biltcliffe actually said. However, other reasonable persons could conclude that the statement in Mr. Hendren's letter was not intended to be a direct quotation of what Mr. Biltcliffe said but rather a fair characterization of the meaning of his comments. Thus, because reasonable minds could have differed as to the truth of the statement attributed to Mr. Biltcliffe in Mr. Hendren's letter, the trial court erred when it granted the Tenn. R. Civ. P. 50.02 motion in accordance with the motion for directed verdict.

III.

MR. BILTCLIFFE'S INTENTIONAL INTERFERENCE WITH A BUSINESS RELATIONSHIP CLAIM

Mr. Biltcliffe also takes issue with the trial court's denial of his motion for a new trial on his intentional interference with a business relationship claim. He asserts that the evidence does not support the jury's failure to award him damages for intentional interference with his business relationship with Alley-Cassetty because he presented evidence establishing all the elements of the claim. This record provides no basis for second-guessing the trial court's decision to deny Mr. Biltcliffe's motion for a new trial.

⁷For example, Mr. Hendren's letter could be interpreted as stating that Mr. Biltcliffe said, "I will kill you if you block my truck."

⁸For example, Mr. Hendren could have been stating that Mr. Biltcliffe's comments created an impression that he was threatening to "kill" one of the other drivers.

⁹Such as: We have already discussed the "threat to kill" incident that occurred on July 13, 2001.

A.

The issue that Mr. Biltcliffe has asked us to address, as stated in his brief, is “[w]hether the trial court erred in denying the plaintiff’s motion for new trial on plaintiff’s claim of interference with a business relationship.” This issue focuses solely on the trial court’s decision as thirteenth juror to independently approve the jury’s verdict. Appellate courts, of course, cannot review the accuracy of a trial court’s determination, as thirteenth juror, that the jury’s verdict is sustained by the evidence. *State v. Moats*, 906 S.W.2d 431, 435 (Tenn. 1995); *Moss v. Sankey*, 54 S.W.3d 296, 298 (Tenn. Ct. App. 2001); *State v. Burlison*, 868 S.W.2d 713, 719 (Tenn. Crim. App. 1993).

Even though the decision of the trial court as thirteenth juror is generally beyond our reach, the jury’s verdict is not. Despite the manner in which Mr. Biltcliffe framed this issue in his brief, we presume that he intended to challenge the evidentiary foundation of the verdict rather than the trial court’s approval of the verdict. One of the most common grounds for a motion for a new trial is that the verdict is contrary to the weight of the evidence. Nancy Fraas MacLean et al., *Rules of Civil Procedure Annotated*, 4 Tenn. Practice § 59:7, at 343 (3d ed. 2000) (“*Rules of Civil Procedure Annotated*”). When this issue is raised, the appellate courts’ role is limited to reviewing the record to determine whether it contains material evidence supporting the verdict. Tenn. R. App. P. 13(d); *Barnes v. Goodyear Tire & Rubber Co.*, 48 S.W.3d 698, 704-05 (Tenn. 2000); *Wagner v. Fleming*, 139 S.W.3d 295, 300 (Tenn. Ct. App. 2004). For the purpose of this analysis, material evidence is evidence relating to the matters at issue in the case which, when reviewed in a light most favorable to the prevailing party, supports the jury’s verdict. *Kelley v. Johns*, 96 S.W.3d 189, 195 (Tenn. Ct. App. 2002).

Issues regarding the evidentiary foundation for a jury’s verdict most frequently arise when the jury has returned a plaintiff’s verdict awarding damages. The customary standard of review provides an appropriate framework for assessing the adequacy of the evidentiary foundation for what the trial court did. The usefulness of the “material evidence” standard diminishes in cases like this one in which the plaintiff is challenging the evidentiary foundation for the jury’s decision not to return a verdict on a particular claim. Juries decline to return verdicts for many reasons even when the record contains evidence that could have supported a plaintiff’s verdict had the jury desired to return one.

Nonetheless, this court has mentioned the “no material evidence” rule in three cases involving verdicts for the defendant. In two of the cases the standard of review did not affect the outcome of the case because we never actually evaluated the evidence. The decision hinged on whether the trial court correctly discharged its responsibility as thirteenth juror. *Shivers v. Ramsey*, 937 S.W.2d 945, 947 (Tenn. Ct. App. 1996); *Miller v. Doe*, 873 S.W.2d 346, 347-49 (Tenn. Ct. App. 1993). In the third case, however, this court actually reversed a verdict for the defendant after reviewing the record and concluding that there was no material evidence to support a defendant’s verdict. *McDonnell Ins., Inc. v. Irons*, No. 02A01-9405-CV-00110, 1995 WL 262421, at *3 (Tenn. Ct. App. May 8, 1995) *pet. reh’g denied*, (Tenn. Ct. App. June 23, 1995) (No Tenn. R. App. P. 11 application filed).

At least one other state declines to consider appeals challenging the sufficiency of the evidence to support a defendant's verdict.¹⁰ We view this approach as too extreme because it is conceivable that cases could arise in which a verdict for the defendant is legally unsupportable. However, we also find that a literal and strict application of the "no material evidence" rule is problematic in cases when the jury has returned a verdict for the defendant. When a verdict is against the party having the burden of proof, we must keep in mind that the party may simply have failed to convince the jury of one or more essential elements of its case. *Schaeffer v. McGhee*, 689 S.W.2d 537, 539 (Ark. 1985). The weight of the evidence and the credibility of the witnesses are within the exclusive province of the jury. *Kim v. Boucher*, 55 S.W.3d 551, 555 (Tenn. Ct. App. 2001).

Plaintiffs who challenge the evidentiary support for a defendant's verdict are essentially asserting that they are entitled to a judgment as a matter of law. Accordingly, no matter how strong the evidence presented by the party having the burden of proof may comparatively seem to be, that party is not entitled to have its version of the facts declared to have reality as a matter of law unless there is utterly no rational basis in the situation, testimonially, circumstantially, or inferentially, for a jury to believe otherwise. *Dovers v. Stephenson Oil Co.*, 128 S.W.3d 805, 811 (Ark. 2003). Stated another way, a plaintiff seeking to challenge the evidentiary foundation of a verdict for the defendant must satisfy the requirements applicable to Tenn. R. Civ. P. 50.01 or 50.02 motions. The party must demonstrate that the evidence, viewed in the light most favorable to the prevailing party, would require all reasonable persons to reach the same conclusion, *Mercer v. Vanderbilt Univ.*, 134 S.W.3d 121, 130-31 (Tenn. 2004); *Gaston v. Tennessee Farmers Mut. Ins. Co.*, 120 S.W.3d 815, 819 (Tenn. 2003),¹¹ and that that conclusion should have been a plaintiff's verdict.

B.

We cannot ascertain from this record why the jury declined to award Mr. Biltcliffe damages on his intentional interference with a business relationship claim. The jury could have decided that he did not present sufficient evidence to support this claim. However, the jury could very well have decided that it had adequately compensated Mr. Biltcliffe by awarding him \$65,000 on his defamation claim because the measure of damages for the two claims substantially overlaps. In this circumstance, the jury would not have been required to return a verdict for Mr. Biltcliffe even if he had made out a prima facie case of intentional interference with a business relationship.

Mr. Biltcliffe asserts that he presented evidence establishing all of the elements of his intentional interference with a business relationship claim and, therefore, that he was entitled to recover on this claim as a matter of law. When the Tennessee Supreme Court incorporated this tort into Tennessee's jurisprudence in 2002, it held that a prima facie case contained the following five

¹⁰ *Muegler v. Harper*, 932 S.W.2d 419, 421 (Mo. Ct. App. 1996).

¹¹ This standard of review is compatible with our *McDonnell Ins., Inc. v. Irons* decision. The jury in that case returned a verdict for the defendant despite the fact that he had admitted that he had a contract with the plaintiff and that he had breached the contract. Based on those undisputed facts, no reasonable person could have reached any conclusion other than that the defendant had breached the contract.

elements: (1) an existing business relationship with specific third parties or a prospective relationship with an identifiable class of third persons; (2) the defendant's knowledge of that relationship and not a mere awareness of the plaintiff's business dealings with others in general; (3) the defendant's intent to cause the breach or termination of the business relationship; (4) the defendant's improper motive or improper means; and (5) damages resulting from the tortious interference. *Trau-Med of Am., Inc. v. Allstate Ins. Co.*, 71 S.W.3d 691, 701 (Tenn. 2002).

Our examination of the record reveals that Mr. Biltcliffe failed to prove at least two essential elements of this intentional interference with a business relationship claim. First, he failed to prove that Mr. Hendren intended to induce Alley-Cassetty to end its business relationship with Mr. Biltcliffe. Mr. Hendren's letter simply suggested that Mr. Biltcliffe "haul elsewhere." Thus, Alley-Cassetty could have complied with Hailey's Harbor's request simply by reassigning rather than terminating Mr. Biltcliffe. Second, Mr. Biltcliffe failed to prove that either Mr. Hendren's or Hailey's Harbor's actions were improperly motivated. The record demonstrates that Mr. Hendren's letter was based on his sincere belief that Mr. Biltcliffe's conduct with the harbor employees and his fellow drivers was disruptive and problematic.

Accordingly, we find that Mr. Biltcliffe failed to demonstrate that reasonable persons, viewing the evidence in the light most favorable to Hailey's Harbor, could only have concluded that Mr. Hendren wrote his July 17, 2001 letter with the intent to cause Alley-Cassetty to sever its business relationship with Mr. Biltcliffe. Therefore, we affirm the trial court's denial of Mr. Biltcliffe's motion for a new trial on the intentional interference with a business relationship claim.

IV.

THE TRIAL COURT'S FAILURE TO RULE ON HAILEY'S HARBOR'S MOTION FOR A NEW TRIAL

One final matter remains to be addressed. While the trial court ruled on the Tenn. R. Civ. P. 50.02 motion filed by Hailey's Harbor and the motion for a new trial filed by Mr. Biltcliffe, it failed to rule conditionally on the motion for a new trial filed by Hailey's Harbor.¹² Tenn. R. Civ. P. 50.03 directs trial courts to rule conditionally on motions for new trial when they are filed along with a Tenn. R. Civ. P. 50.02 motion,¹³ and compliance with Tenn. R. Civ. P. 50.03 is mandatory. *Huskey v. Crisp*, 865 S.W.2d 451, 454 (Tenn. 1993).

¹²The final order did not dispose of the motion for a new trial filed by Hailey's Harbor one way or the other. During its ruling from the bench, the court stated at one point that it could not support the verdict as thirteenth juror but then stated that it would not grant the motion because it had decided to grant the Tenn. R. Civ. P. 50.02 motion. The only conclusion to be drawn is that the trial court neither granted nor denied the motion for a new trial.

¹³Tenn. R. Civ. P. 50.03 permits litigants to file combined motions for a judgment in accordance with their motion for a directed verdict and for a new trial. The rule also requires trial courts to first rule on the party's motion for a judgment in accordance with the motion for a directed verdict and then rule conditionally on the party's motion for a new trial. Doing so simplifies the course of subsequent proceedings. *Rules of Civil Procedure Annotated*, 4 Tenn. Practice § 50:5, at 127-28.

Accordingly, this case must be remanded to enable the trial court to discharge its obligation to rule on Hailey's Harbor's motion for a new trial. We have already determined that the trial court erred by granting the Tenn. R. Civ. P. 50.02 motion filed by Hailey's Harbor. Accordingly, the trial court, acting as thirteenth juror, must either deny Hailey's Harbor's motion for a new trial and thereby reinstate the jury's verdict in favor of Mr. Biltcliffe or grant the motion for a new trial and then conduct a new trial solely on Mr. Biltcliffe's defamation claim.¹⁴

V.

We reverse the portion of the September 29, 2003 order granting the Tenn. R. Civ. P. 50.02 motion filed by Hailey's Harbor and remand the case to rule on Hailey's Harbor's motion for a new trial as well as any other proceedings that may be required. We also tax the costs of this appeal in equal proportions to Arnold Biltcliffe and his surety and to Hailey's Harbor for which execution, if necessary, may issue.

WILLIAM C. KOCH, JR., P.J., M.S.

¹⁴Even though the trial court's comments from the bench reflect that it does not approve the verdict as thirteenth juror, the trial court's order does not dispose of Hailey's Harbor's motion for a new trial one way or the other.